

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>9/11/15</u>
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BARBARA DUKA.

Plaintiff,

- against -

U.S. SECURITIES AND EXCHANGE  
COMMISSION,

Defendant.  
-----X

15 Civ. 357 (RMB) (SN)

**ORDER**

The Court has reviewed the SEC's letter of September 10, 2015 and finds and directs as follows:

1. The Court perceives and appreciates the **irony** of the SEC's (own) arguments, particularly on p. 2 of its letter, wherein the SEC states: "Permitting the Second Circuit to address whether Plaintiff is likely to prevail on the merits (including whether this Court has jurisdiction) before the parties litigate this case to final judgment would serve the interests of judicial economy. If the Second Circuit finds that district courts lack jurisdiction over challenges to SEC administrative proceedings like Plaintiff's, that ruling will obviate further proceedings in this case. If, on the other hand, the Second Circuit finds district court jurisdiction in this case, then it will address whether the SEC administrative law judges are inferior officers under Article II of the Constitution, which will bear significantly on this Court's consideration of Plaintiff's Article II claims. Because the Second Circuit's decision is likely to have a significant if not dispositive impact on this case, a stay would conserve the resources of both the parties and the Court."

2. The outcome now sought by the SEC – but initially opposed by them – is precisely the same as the outcome proposed by litigants turning to the federal district courts to halt what they perceive to be unconstitutional proceedings before the administrative agency. **The rationale is to obtain judicial review of these issues before rather than after the fact of a full-blown agency proceeding. This rationale also promotes judicial and administrative agency efficiency, among other things.**
3. Early judicial review by the District Court and the Court of Appeals is also compatible with the Court's Decision and Order, dated April 15, 2015, and its Decision and Order preliminarily enjoining the SEC from proceeding against Duka, dated August 12, 2015.
4. The conference on September 16, 2015 is moved up to **9:30 am** in order to allow the parties orally to present brief argument (15 minutes per side).
5. Duka is requested to respond to the SEC's letter of September 10, 2015 by Monday, September 14 at **noon**.
6. **No further submissions are to be made by either party other than as contemplated in this Order and the parties are directed not to make any further ex parte calls to the Court's chambers.**
7. No stay of any proceedings is in effect at this time, except that the SEC proceedings against Duka are enjoined.

Dated: New York, New York  
September 11, 2015

  
RICHARD M. BERMAN, U.S.D.J.